Utilities Privatization Phase III Workshop
6-7 Jun 2000
Minutes

Tuesday, 6 Jun 2000:
Mr. Dennis Firman, HQ AFCESA/CD welcomed the workshop attendees, thanked them for their participation, and stressed the importance of the Utilities Privatization (UP) program and the need for teamwork to complete it successfully.

Col Michael Cook, HQ AFCESA/CES, greeted the attendees with a brief description of the purpose of the meeting. He noted that Phase III presents major challenges to both the installations and the Major Commands to get the Utilities Privatization RFP on the street, evaluate proposals and award the contracts to implement privatization.

Mr. Rick Baker, HQ AFCESA Utilities Privatization Program Manager, presented administrative announcements, the purpose of the workshop and provided a detailed look at the agenda. He stressed how critical it is in Phase III to work as a team (CE, FM, contracting, legal). He discussed the support for Utilities Privatization from the Air Force leadership, and the status of RFPs issued to date and the commitment for future RFPs on the street over the next few months.

Mr. John Carr, DUSD(I)H&E, reported that new OSD guidance should be sent to the field soon. He emphasized that uneconomical utility systems can't be bundled with economic ones to improve their economic viability. Each system must pass the 10 USC 2688 criteria. OSD has provided guidance on the subject of fair market value. The use of replacement cost new less depreciation should be acceptable; appraisals are not expected to be required. A question was raised if failure to achieve fair market value would result in non-awards. The response was that the amount of the proposal would constitute fair market value; a non-award would result if no proposal was less than the adjusted status quo value. Relative to the proposed 10 USC 2688 language changes, the House version would limit competitive opportunities by forcing compliance with state and local regulations. He stated the AF UP process will be used as the model for OSD since it had the best approach and policy and guidance of the services. Col James Kennedy, HQ AFMC/CEI asked why UP was not combining utility distribution with the commodities. Rick Baker responded that deregulation makes separating the commodity most advantageous.

Maj Ric Thomas, HQ USAF/ILEIO, addressed Air Staff guidance on numerous issues. He mentioned the daily focus at Air Staff was summed up by three words: Measured, Balanced and Accountable". He reported that the Air Force was recently shown as 15% through the UP program; the nearest other services was at 12% complete. The Policy and Guidance update should be released by ILEI late June unless the pending legislative changes have significant impacts. OSD is estimating approximately 65% of systems being analyzed will be successfully privatized; 51 systems are pending or are late for Phase I completion and will require MAJCOM/CV attention if they will negatively impact AF execution to be reported in the 15 Jul 00 Quarterly Report to OSD. ILEI must provide an update to Mr. Orr (AF Champion) by 6 July on the impact of UP on MWR Category C facilities. The form of protests to date for UP was questioned. Mr Baker reiterated that UP is a real estate transaction but since a utility service contract will be awarded the FAR applies and therefore protests may occur. Protests and letters of involvements to date have been presented through the contracting officer. In response to a question on the source of funds for the POM disconnect, Maj Thomas said that the money currently must come from the AF Table of Allowances and AF leadership is reviewing the AF funding strategy. He briefed Lt Col Armesto was briefing the 2 digits this week and would send out guidance once available. Mr. Orr has indicated that this is an AF issue and should be solved there. To the question what is the likelihood of the funding shortfall stopping UP, he responded there is no prediction at this time. However, since we must have a planning Form 9 prior to releasing the RFP, this issue must be resolved soon. Maj Thomas stressed the commands and bases need to make sure they understand and communicate the three types of Economic Analysis (EA); Preliminary EA, Source Selection Team analysis, and the Certified EA that are performed as part of the UP process.

Mr. Fred Nehrings, HQ AFCESA/CEOC (TRW), reviewed the Phase II process. In response to the question on how many deviations to the RFP template had gone through the ILEIO approval process, he responded there haven't been any yet. Installations are still providing their input to the template. The flow of the deviation reporting was shown as from the base to the MAJCOM to ILEI, who will coordinate with the AF IPT. These requests should be tracked and managed through the CE functionals. Question was asked how deviations would be rejected. Col Streifert issued previous guidance and justification for changes to the template.

Ms. Madhu Lefevre, SAF/AQCO, reported on the revisions being made to the competitive RFP template and emphasized that the version handed out at the workshop is still a draft. The final revised template should be released to the field 13 June. The changes are primarily to Sections B, C, L, and M. The Davis-Bacon Act is the main driver for changing Section B, with ripple effect changes to other sections. Several persons echoed that the Standard Procurement System (SPS) and PD2 implementation does not match the template. SPS also does not go out to 50 years. SAF/AQC took action to address this issue. The audience requested an annotated RFP to highlight all the changes. AFCESA/CEOC reported that we can add change bars to the affected paragraphs. Amendments will be necessary for all RFPs issued to date. It was asked if Section H.6 included periods of non-performance; Phil Sheuerman, SAF/GCN, responded that it did not. After privatization, the Air Force will probably not have assets to re-assume operation of utility systems. The response to the question of what leverage do we have without reversionary capability was that the Right of Way (ROW) document has language to address this. Although commodities are not included in the RFPs, some proposals may be received from off-base utility providers who are motivated by profits from commodity sales. Mr. Bob Walker, Arnold Engineering Development Center, TN, reported that only response times are costed in the RFP, and this is not acceptable. However, over specification violates performance contracting directives. He believes we need more metrics and that an award fee contract type would better lend itself to managing performance. Col Kennedy suggested that combining commodity with distribution would provide leverage. Maj Thomas observed that the 3 interrelated programs (UP, energy, and deregulation) are on 3 separate timelines, and that we must press ahead to remain on our UP schedule.

Mr. Mark Iden, Defense Energy Support Center (DESC), and Mr. Larry Edwards, 325 CONS, briefed an Overview of the Source Selection Process. Mark reported that DESC is the chair for the technical and cost evaluations for some bases/MAJCOMs. Due diligence, if desired by the installation/MAJCOM, will be performed only after the Statement of Qualification (SOQ) results are available. SOQs are optional and will only be done if the customer requires them; they are not a disqualifying requirement. Ms Lefevre added that the cover letter for the RFP will address this as optional for each installation. The Acquisition and Source Selection Plans will not be included in the Comprehensive Analysis Report (CAR) due to Source Selection sensitivity. Mark stated that the time from RFP release to receipt of proposals will be 120 days. The time from RFP release to contract award will be 385 days. He stressed the importance of caution in releasing information during Source Selection. The approval status of the DESC template was questioned. Ms. Lefevre confirmed that the DESC template has been approved and that AQC will notify the field. DESC will incorporate the revised AF template changes into their template. Larry Edwards reported that contract administration and funding for UP remain major issues. Form 9s for all bases except the TRD and Maxwell will show unfunded requirements for FY01 (i.e., "Zero" dollar value Form 9s). Larry emphasized that contracting officers must police the contracting process for either actual or perceived individual or organizational conflicts of interest.

Mr. Matt Tyler, CH2MHill, briefed the steps required to finalize the RFP. He opened by stating that approval may be necessary for Specific Service Requirements if Section C is affected. Meter calibration frequency must be stipulated in the Quality Management Plan. Relative to the issue of comprehensive metering, Matt briefed that contractors are motivated to fix line losses through projects which serve to maximize his profits. We should minimize meters to provide for reimbursable customers and sampling only. Commercial counterparts usually install comprehensive metering. Strategically placed meters are recommended along with temporary meters as specified in the RFP. Phil Sheuerman again stated that street lights (commodity consumers) cannot be sold, but service contracts can be used to provide this maintenance. If proposers do not bid on deficiencies, we can still evaluate them through the technical evaluation process; the EA will have to be tailored. Current wording in the RFP Section J which says clean outs "should" be installed requires clarification. Clean outs can be included at our discretion if we believe they are required. The RFP wording will be clarified to reflect this. If new MILCON projects require utility connections, who will pay? The response was that the MILCON will pay for the new service. To the question will the government divest itself of liability, the response was, it depends; you can't contract liability. Phil Sheuerman stated that the new owner will own the contents of the pipe. If a privatization action causes a loss of waiver or grandfather status, then costs would appear on the privatization side for deficiency remedies.

Ms. Lizette Richardson, HQ AFCESA/CEOC (TRW), provided tips for conducting pre-proposal (PP) conferences and site visits based on lessons learned from the Texas Regional Demo and Maxwell/Gunter projects. She provided information on how to conduct PP conference/site visits and stated a sample briefing was provided in the workbook. She mentioned bases should anticipate additional site visits and need to consider what they can support. She recommended having the technical library set up early and on electronic format (CDs). Someone questioned if there is a security threat associated with posting the electronic technical library on the web. One suggestion was to restrict the information to CDs mailed to interested potential bidders only. AF/ILEIO took an action item to research this.

Mr. Brent Smeltzer, HQ AFCESA/CEOC (TRW), briefed Statements of Qualifications (SOQs) and Source Selection Evaluation Factors. The SOQ is an optional step in the acquisition process and was intended to eliminate or discourage obvious non-qualifiers. Under the current policy, if SOQs are not submitted, they do not preclude bidders from submitting full proposals. SOQs have the advantage of giving early indications of market interest. The Source Selection Guide (SSG) developed by Brent, CH2MHill, DESC and others should be available to contracting officers by the end of June. The process for meeting both the cost and best value requirements of USC 2688 must be defined. Still at issue is whether price should be evaluated and high bidders (i.e., those above the adjusted status quo cost after discussions) be eliminated or will the best value proposals be determined first. He briefed the evaluation factors identified in Section M of the RFP and the SSG format. He mentioned there would be a separate meeting on 8 Jun to review the guide and align it with the latest RFP.

Mark Iden described two types of electronic Source Selection tools. ARINC, Inc. has briefed the ESS (Microsoft Access based) and EZ Source (Lotus based) software for compiling Source Selection data. AFCESA will evaluate the ESS software for UP applications using our evaluation factors. DESC may use this software at Brooks AFB for the Texas Regional Demonstration project.

Mr. Rick Baker concluded the first day by reviewing the action items identified to date.

<u>Wednesday 7 Jun 2000:</u>

Ms. Dale Peaden, 325 CONS, discussed Past Performance Evaluation. Projects (either current or within the past 5 years) that are similar in scope to our utility systems will be evaluated. Proposals with no recent similar performance will receive a neutral rating. Due diligence surveys will be used and attached to the RFP to standardize how surveys are performed. CE will be requested to provide funding after the Source Selection Authority is briefed. Asked if there was an effort to centralize past performance information, the response was that this presents challenges to Source Selection sensitivity and identifying a storage agency (SAF/AQCO action item). The performance rating is also time sensitive. Source Selection costs are being tracked by ESP coding.

Mr. Jacob Moser, DESC, spoke next on the Technical and Cost Realism evaluations conducted during Source Selection. These evaluations will vary in duration, depending on the number of bidders, number of systems, and the number of locations. This fact may require tailoring of the procurement milestones. Jacob, when asked the status of Capt Tim McWilliam's (HQ AFCESA/CEOC) draft Technical and Pricing evaluation guide, responded that Brent Smeltzer is continuing to work this in a Source Selection Guide package. Mr. Tom White, HQ ACC/CEOO, questioned whether a performance bond should be included in the RFP for non-regulated utilities (ACC plans to include as a template deviation). He believes the performance bond is an insurance policy for the period between default and the final T for D and that the bonding company will be responsible for finding a replacement workforce; you can waive the bonding requirement upon regulation coverage. Mr. Sheuerman totally disagreed with the need for a performance bond.

Question: If new owner declares bankruptcy, who then owns the system; response: new owner still has Bill of Sale, but financier will be involved. Question: what happens with a merger or hostile takeover; response: the contractural responsibilities will not change as a result. Question: how does the government (who no longer owns the system) write a service contract to operate the system if the new owner defaults; response: the government can't do this for a system it no longer owns.

Mr. Tom Burns, HQ AFCESA/CESC, Mr. Dave Gray, CH2MHill, and Maj Alan Laverson, SAF/FMCE, addressed the Draft and Certified Economic Analysis. Edwards AFB questioned why the sources of adjustments to the status quo were not documented in Phase I. Tom replied that they are certified in Phase III, not in Phase I.

Question: how do we set Fair Market Value (FMV) to avoid CIAC costs to the contractor; response: use negotiated cost to determine the FMV; the IRS agrees with this approach. Question: why compute the RCLND and OCLD if the FMV will stand; response: 2688 requires the Service Secretaries to determine and verify the achievement of FMV. Question: will the government cost estimate be adjusted to match the proposals; response: not unless new proposals identify deficiencies not in the original government estimate but agreed to by the government; response: SAF/FM will issue guidance on establishing FMV. Question: has the AFCESA/ULT workload for price re-determination been included in the CEA model; response; not yet. Dave Gray continued with a discussion of the CEA model being developed by CH2MHill. He reported that the nominal discount rate accounts for inflation using current dollar LCC analyses. Question: is appreciation captured in the CEA; response: no, appreciation is a non-cash item and is not included. Question: will bidders provide cash flow data for the EA; response; only in the CLIN structure. Question: have any sensitivity analyses been conducted to find the most influential factors; response: not in detail but will be accomplished. Question: should MEO/A-76 level of effort be used for status quo; AF/ILEIO will address in the Policy and Guidance update.

Ms. Lizette Richardson briefed the Approval package and the documents prepared at the end of Phase III that would be submitted to Congress for approval. She briefed a flow chart of the approval process as going from the base/MAJCOM to Air Staff over to Mr Orr. The only documents that OSD will send to Congress are the notification letters with the Certified EA. The AF approach is to not take action after 21 days without a response from Congress. Once approved, SAF/MII will convey the real estate and the contractor will sign the utility service contract and real estate documents.

Mr. Phil Sheuerman, SAF/GCN, covered many legal aspects of Utilities Privatization. He addressed the Bill of Sale and Right of Way needed to be signed for each utility system and the Bill of Sale (BoS) will not be effective until contract start. He discussed the privatization of street lights again and stressed that the bases need to be aware there are no industry standards for street lights. He gave an update to the proposed amendment to USC 2688. He indicated the Senate version supported the Competition in Contracting Act and was similar to the OSD legal opinion issued and that the House version favors following state regulations and laws but does much more. OSD supports the Senate version. He feels the House version will be very destructive to the UP program.

Maj. Bill Owens, HQ AFCESA Utilities Privatization Project Manager and Mr. Mike Cross, HQ AFCESA Civil Engineering Support, addressed the issue of transition from two aspects: transition once we award a UP contract and transition as it relates to the Government transition plans that are finalized in Phase III.
Maj Owens discussed the timeline of events for transition that are spelled out in the RFP and addressed the issue of transferring the system with/without permits. Feedback from the bases and environmental experts indicated securing permits for ww treatment plants could take up to 12-24 months. The AFCESA A-E support contractors relayed that discussions with state agencies during Phase I concluded "transfer" could take only 60-90 days. Maj Owens briefed 3 options to handle this issue, but it will likely be handled on a case-by-case basis depending on the regulatory environment of that state.

Col Lance Brendel, HQ AFCESA/CEO, presented closing remarks, thanking the workshop attendees for their participation and once again emphasizing the need for teamwork to meet the aggressive Utilities Privatization schedule.

Copies of briefing slides and other materials from the workshop were made available in CD-ROM format to MAJCOM representatives.

Action Items generated during the Phase III Workshop are included in the attached table.